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(2) REMARKS

Unobviousness

Claims 1-3, 5-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Blaschke, *et al.*

The examiner states that the "Persson product and method differ from the claimed product and method in that the product is a sugar confectionery and not a cookie."

Blaschke, *et al.*, is said to disclose "a ready-for-use cookie dough which is provided with score lines or grooves that define equally sized portions to be broken off and baked to form individual cookie." The Office Action asserts that each "piece of the dough block is stamped on the top with a recognizable design or image such as an animal or geometric shape."

The Office Action concludes as follows:

It would have been obvious to change the substrate in Persson from a candy to a cookie to obtain a novelty cookie product. Both candies and cookies are commonly consumed by children. Thus, the playful idea of licking to reveal picture taught by Persson will be equally appealing to children when it is applied to a cookie product. It would have been obvious to apply the teaching of Persson to the Blaschke, *et al.*, cookie to obtain a novelty cookie product which will be appealing to children with it playful image revealing. It would also have been obvious to one skilled in the art to form a cookie from two cookie bases adhering to a layer of confection to form cookies having different flavor and taste; this type of sandwiching cookie is well known in the art. Confection cream containing fat and sugar is well known in the art as admitted by applicant in the specification. It would have been obvious to put a layer of confection over the picture as taught by Persson to form a hidden image to appeal to a sense of playfulness while eating to children. It would also have been obvious to put

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any type of design on the cookie base; this would have been a matter of preference.

This rejection is respectfully traversed because there is no teaching to be found in the references themselves for making the combination, the references are not in fact combinable, and even if the references were combined, the combination would not result in the claimed cookie product that is simple to make with conventional equipment, yet is entertaining and engaging.

Applicant has previously discussed the Blaschke, *et al.*, reference as teaching only what applicant readily concedes is prior art – namely, making cookies with various images thereon. The Blaschke, *et al.*, reference, however, failed to teach an important aspect of the invention that was the fact that a simply manufactured cookie could be made to have a significant entertainment value. The Persson reference has apparently been cited to remedy this deficiency. However, the person skilled in the art would not have found the claimed invention obvious having both of these references before him.

In addition to the difference between the Persson reference and applicant's claimed invention noted by the examiner, namely that "the product is a sugar confectionery and not a cookie", applicant notes that there are further differences of considerable significance.

The picture of Persson is just that, a picture. It is not a three dimensional image and is enabled in the Persson confection only with considerable effort and the use of additional steps and materials not necessary for the present invention. The picture of Persson requires the steps of: (1) forming a recess in the candy, (2) forming a wafer, (3) printing the wafer with a specially formulated ink, (4) covering the wafer with hard candy, and finally (5) covering the hard candy layer with a soft coating. This is a lot of work and cannot be accomplished on conventional cookie forming equipment. Indeed, it requires separate cookie (wafer) forming and candy forming equipment.

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The person skilled in the art looking at the Persson process and product would not see a simple conversion process for making the composite confection out of cookie instead of candy. There is no teaching of such. In fact, the separate use of a cookie (wafer) as part of the product of Persson teaches away from the use of an all cookie product as does the use of two layers on top of the wafer in addition to the candy substrate. To convert the product of Persson to all cookie would change, fully, the nature and construction of the product. As such, the modification would not be obvious.

In addition to the points above and in applicant's prior response, any attempt to combine the teachings of Persson and Blaschke, *et al.*, would result in a product different from that of the invention. If the Persson candy were replaced with a cookie like that of Blaschke, *et al.*, there would still be the need to coat with a hard candy and then a soft confection. That would, chances are fill in the three dimensional design, making the use of such useless. If useless, why would someone skilled in the art make it.

The Persson reference fails also because it fails to recognize that: (a) the base candy (10) of Persson could or should be printed in either a flat format or in three dimensional form; (b) the wafer might be dispensed with, if desired; (c) the wafer need not be printed; or (d) the hard candy coating is not necessary. Surely, to remake the product of Persson in the form claimed by applicant would be to totally redesign and remake the product of Persson, keeping nothing of the original. And to do so by looking at applicant's invention would be to impermissibly use hindsight.

The Blaschke, *et al.*, reference teaches only what applicant has already conceded is prior art. The Blaschke, *et al.*, reference, fails to teach any important aspect of the invention, and it provides the skilled worker with no suggestion that the Persson product could be modified in any way. Blaschke, *et al.*, doesn't in any way teach or suggest covering up the images it describes. Thus, the provision of both the possibilities of images and icing by

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Blaschke, *et al.*, teaches nothing of covering up the image – to make it a latent the three-dimensional image – so that the icing can be playfully and enjoyably removed to reveal the three-dimensional image. The Persson reference does not teach that the image to be covered can be made in a cookie, not a candy, with no need for printing, with no need for a hard candy coating and no need for special equipment. The only disclosure of that comes from applicants' very description of their invention. The person skilled in the art would not have found the claimed invention inventive and unobvious having both the Persson and the Blaschke, *et al.*, references before him.

Claims 4 and 10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Blaschke, *et al.*, as applied to claims 1-3, 5-9 and 11-13 above, and further in view of Pappas, *et al.*

The Office Action states:

Persson and Blaschke, *et al.*, do not teach forming the picture by rotary molding. It would have been obvious to one skilled in the art to use any known method to make the design on the cookie. It would have been obvious to use rotary molding as taught by Pappas, *et al.*, to make the picture on cookie because they teach such method is used to make designs on cookie product

This rejection is respectfully traversed for the reasons given in applicant's prior response and above and because the Pappas, *et al.*, reference does not teach the features missing from the Persson and Blaschke, *et al.*, references, as would be necessary to make the the claimed cookie product and process for making it obvious to the person skilled in the art. And, even if the references were combined, the combination would not result in the claimed cookie product that is simple to make with conventional equipment, yet is entertaining and engaging.

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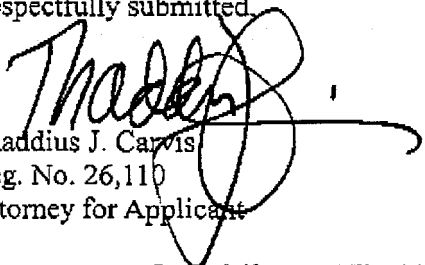
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Again, the reference does not address the key features of the invention, which make it possible to improve cookie products by providing one that is simple to make with conventional equipment, yet is entertaining and engaging. The principal features of the invention are asserted to be obvious, but there is no suggestion provided by the prior art to in any way arrive at the invention claimed. The inventive concept and its attendant new advantages and uses are not in any manner taught or suggested by Pappas, *et al.*

Applicant has made a significant improvement in cookie products by providing one that is simple to make with conventional equipment, yet is entertaining and engaging. The claims clearly and concisely set this invention out in terms that patentably distinguish from the prior art. Accordingly, reconsideration and allowance of all claims are believed in order, and such actions are earnestly solicited. If applicant's representative can advance the application toward allowance by telephone, the examiner is requested to call him at the number listed below.

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Respectfully submitted



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